IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

RSA.No. 487 of 2007()

AGINST THE JUDGMENT AND DECREE IN A.S.4/2005 of DISTRICT COURT, LAKSHADWEEP
AGAINT THE JUDGMENT AND DECREE IN O.S.5/2003 of MUNSIFF'S COURT, ANDROTH
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APPELLANT/APPELLANT/PLAINTIFF:

PUTHANPURA SEETHI HAJI,
S/O KEECHELAM SYED BUHARI,
AGED 48 YEARS, ANDROTT ISLAND.

BY ADV. SRI.T.H.ABDUL AZEEZ
SRI.P.RAJEEV KUMAR
SRI.P.ANOOP

RESPONDENTS/ REPONDENTS/ADDL.DEFENDANTS 2 & 3:
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1. **MAYAMPOKKADA SAROMMABI,**
   D/O MAYAMPOKKADA FARKY, AGED 66 YEARS,
   ANDROTT ISLAND.

2. **MAYAMPOKKADA MUSTHAFA,**
   S/O MAYAMPOKKADA FARKY, AGED 61 YEARS,
   ANDROTT ISLAND.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J

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R.S.A.No. 487 of 2007

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Dated this the 9th day of July, 2007

JUDGMENT

Plaintiff in O.S.5/2003 on the file of the Munsiff Court, Androtт is the appellant. Defendants are the respondents. Appellant in seeking a decree for permanent prohibitory injunction contending that plaint schedule property was obtained by Farky and Kadiya under a compromise deed in 1923 and it was gifted by them in favour of Sayed Buhari under Ext.A3 gift deed and on the death of the Sayed Buhari it vested on the appellant and others and appellant has been in possession and enjoyment of the property and respondents have no right or possession in the property. Respondents contended that Farky is the mother of the first respondent and Kadiya is her sister and as per compromise entered in 1923 plaint schedule property vest in the mother of the first respondent and her sister and at that time mother was residing in the house and Farky and Kadiya granted permission for the continued residence of Sayed Buhari and his brothers and sisters providing that the house would revert back to the family of Farky and Kadiya on their

death and at present one niece of Sayed Buhari by name Mariyommabi is residing in the house and appellant is not in possession of the property and therefore, he is not entitled to the decree sought for. Learned Munsiff on the evidence of PW1, DW1 and Exts.A1 to A6 and B1 to B5 found that appellant did not establish possession of the property and therefore he is not entitled to the decree for permanent prohibitory injunction sought for. Appellant challenged the decree before District court, Lakshadweep in A.S.4/2005. Learned District Judge re-appreciated the evidence and confirmed the findings of the munsiff and dismissed the suit. It is challenged in this appeal. Learned counsel appearing for the appellant was heard.

2. The argument of the learned counsel was that court below did not properly appreciate Ext.A3 and from the evidence it should have been found that though niece of Sayed Buhari is residing in the building, the property is in the possession of the appellant and respondents have no right or possession over the same and therefore a decree for injunction should have been granted. It was also argued that respondents 2 and 3 who were

got impleaded on the death of the first defendant as legal heirs did not file separate written statement and their power of attorney had only adopted the written statement originally filed by the first defendant and as they did not file written statement and it should have found that they did not dispute the right of appellant and therefore the findings of the court below are unsustainable.

On hearing learned counsel, I do not find any substantial questions of law involved in the appeal. The suit is one for injunction. Appellant is entitled to get a decree only on establishing his possession, on the date of filing of the suit. The trial court appreciated the evidence and found that appellant did not establish his possession. First Appellate Court re-appreciated the evidence and confirmed that factual findings. Appellant is claiming the decree under Ext.A3 gift deed executed by Furky and his sister Kadiya in favour of his father Sayed Buhari. It was found by the District Judge that Ext.A3 provides only a right of residence given in the building and that too till the death of Sayed Buhari and then his descendants. The specific case of

respondents is that the building is now occupied by a niece of Sayed Buhari and appellant did not establish his possession of the property. That factual findings cannot be interfered by this Court exercising powers under Section 100 of Code of Civil Procedure. Respondents 2 and 3 were impleaded the legal heirs of deceased first defendant. Hence, they are entitled to take all the contentions originally raised by the first respondent. The fact that they did not file separate written statement but adopted the written statement originally filed will not enable appellant to get a decree sought for. As no substantial questions of law is involved in the appeal, the appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR,JUDGE

dvs